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Aaron Jack, Commissioner

Office of the Securities Commissioner

Sam Brownback, Governor

C.U.R.B.

Rec'd MAY 13 2011

Consumer Counsel

May 11, 2011

Nancy Jackson, Chair
Citizens' Regulatory Review Board.
1500 S.W. Arrowhead Road
Topeka, KS 66604-4027

RE: Review of Administrative Regulations

Dear Ms. Jackson,

Enclosed for your review is a Notice of Hearing on Proposed Administrative Regulations, the Proposed Regulations and the Economic Impact Statement. It has been submitted to the Secretary of State and published in the Kansas Register.

If you have any questions or concerns, please do not hesitate to contact me at (785) 296-5215.

Sincerely,

Michelle Lancaster
Legal Assistant

Enclosure

STATE OF KANSAS
OFFICE OF THE SECURITIES COMMISSIONER
NOTICE OF HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS

A public hearing will be conducted at 10:00 a.m., Tuesday, July 19, 2011, at the Office of the Securities Commissioner, 109 SW 9th St., Suite 600, Topeka, Kansas 66612, to consider the adoption of K.A.R. 81-5-21 and the amendment of K.A.R. 81-2-1. The regulations are proposed for adoption on a permanent basis.

Before a security may be offered or sold in Kansas, it must be registered with the Office of the Securities Commissioner or qualify for an exemption from registration. Proposed **K.A.R. 81-5-21** creates a new exemption that allows a Kansas company to raise up to \$1 million without going through the registration process. The maximum allowable investment by any single person is \$1,000 unless the person is an accredited investor. To qualify for the exemption, the company issuing the securities must notify the Office of the Securities Commissioner of its intention to rely upon the exemption before the twenty-fifth sale of the security or the use of any public solicitation for investors, whichever occurs first, and the issuer must make certain disclosures to investors. A commission or other remuneration cannot be given to any person for participating in the offer or sale of securities unless the person is registered as a broker-dealer or agent with the Office of the Securities Commissioner. The company issuing the securities must also comply with the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933. The proposed exemption differs from other available exemptions because it permits a public solicitation for investors.

K.A.R. 81-2-1 currently provides for the adoption by reference of all federal statutes and regulations that are used in the state-level securities regulations. The proposed amendment would add the federal laws that are referenced in new K.A.R. 81-5-21.

The proposed exemption will allow Kansas companies to raise capital without going through the registration process. A company could spend approximately \$15,000 to \$25,000 to properly register a \$1 million securities offering. The costs would include a filing fee of \$500, legal and accounting fees, due diligence costs, and other expenses associated with a securities offering. Most of these costs could be avoided if the company takes advantage of the new exemption, which has no filing fee and is designed to be used with minimal legal assistance.

Because of the high expenses associated with registration, few companies actually use the registration process for small offerings. Therefore, the anticipated loss of revenue to the State of Kansas from registration fees is expected to be less than \$2,000 per year.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing by addressing them to the Commissioner at the above address. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation. Following the hearing, all written and oral comments submitted by interested parties will be considered by the Commissioner as a basis for making changes to the proposed regulations.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an

accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Michelle Lancaster at (785) 296-5215 or the Kansas Relay Center at 1-800-766-3777. Handicapped parking is located on 9th Street or Kansas Avenue, and the hearing room is accessible to individuals with disabilities.

Copies of the full text of the proposed regulations and the economic impact statement may be obtained by writing to the Office of the Securities Commissioner at the above address or by emailing a request to ksc@ksc.ks.gov.

Aaron Jack
Securities Commissioner

81-2-1. Forms and adoptions by reference. (a) Forms. Whenever any of these regulations requires the filing of any of the following forms, the filer shall use the form as issued or approved by the administrator:

(1) Uniform forms:

FORM	TITLE
ADV	Uniform application for investment adviser registration
ADV-W	Notice of withdrawal from registration as investment adviser
BD	Uniform application for broker-dealer registration
BDW	Uniform request for broker-dealer withdrawal
BR	Uniform branch office registration form
D	Notice of sale of securities
NF	Uniform investment company notice filing
U-1	Uniform application to register securities
U-2	Uniform consent to service of process
U-2A	Uniform form of corporate resolution
U-4	Uniform application for securities industry registration or transfer
U-5	Uniform termination notice for securities industry registration
U-7	Disclosure document
U-SB	Uniform surety bond form
	Model accredited investor exemption uniform notice of transaction


(2) Kansas forms:

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MAY 06 2011

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FORM	TITLE
KSC-1	Sales report or renewal application
KSC-15	Solicitation of interest form for issuers organized or based in Kansas

(3) SEC forms:

FORM	TITLE
1-A	Regulation A offering statement under the securities act of 1933
SB-2	Registration statement under the securities act of 1933

(b) Federal statutes. The following federal statutes, as in effect on July 1, ~~2005~~ 21, 2010, are hereby adopted by reference:

(1) Sections 2, ~~3(a)(11)~~ 3, and 17 of the securities act of 1933, 15 U.S.C. §§ 77b, ~~77e(a)(11)~~ 77c, and 77q;

(2) sections 9, ~~and 10, 13, and 15~~ of the securities exchange act of 1934, 15 U.S.C. §§ ~~78i, and 78j, 78m, and 78o~~;

(3) sections ~~203(b)~~ 203, 204A, 205, and 215 of the investment advisers act of 1940, 15 U.S.C. §§ ~~80b-3(b)~~ 80b-3, 80b-4a, 80b-5, and 80b-15;

(4) sections ~~3(e)(10)(B)~~ 3 and ~~5(a)(1)~~ 5 of the investment company act of 1940, 15 U.S.C. §§ ~~80a-3(e)(10)(B)~~ 80a-3 and ~~80a-5(a)(1)~~ 80a-5; and

(5) section 6f of the commodity exchange act, 7 U.S.C. § 6f.

(c) SEC rules and regulations. The following rules and regulations of the securities and exchange commission, as in effect on July 1, ~~2005~~ October 21, 2010, are hereby adopted by reference:

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APR 28 2011

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- (1) 17 C.F.R. 210.2-02;
 - (2) rule 134, 17 C.F.R. 230.134;
 - (3) rule 147, 17 C.F.R. 230.147;
 - (4) regulation A, 17 C.F.R. 230.251 through 230.263;
 - (4) (5) rules ~~501(a)~~ 501, 504, 505, and 506 of regulation D, 17 C.F.R. ~~230.501(a)~~ 230.501, 230.504, 230.505, and 230.506;
 - (5) (6) rule 8c-1, 17 C.F.R. 240.8c-1;
 - (6) (7) rule 10b-10, 17 C.F.R. 240.10b-10;
 - (7) (8) rule 15c2-1, 17 C.F.R. 240.15c2-1;
 - (8) (9) rules 15c3-1, 15c3-2, and 15c3-3, 17 C.F.R. 240.15c3-1, 240.15c3-2, and 240.15c3-3;
 - (9) (10) rules 17a-3, 17a-4, and 17a-5, 17 C.F.R. 240.17a-3, 240.17a-4, and 240.17a-5;
 - (10) (11) rule 17a-11, 17 C.F.R. 240.17a-11;
 - (11) (12) regulation M, 17 C.F.R. 242.100 through 242.105;
 - (12) (13) regulation SHO, 17 C.F.R. 242.200 through ~~242.203~~ 242.204;
 - (13) (14) regulation FD, 17 C.F.R. 243.100 through 243.103;
 - (14) (15) regulation S-P, 17 C.F.R. 248.1 through 248.30;
 - (16) rule ~~205-3(d)~~ 205-3, 17 C.F.R. 275.205-3; and
 - (15) (17) rule 206(4)-1, 17 C.F.R. 275.206(4)-1.
- (d) NASD and New York stock exchange rules and bylaws. The following rules and bylaws, as in effect on July 1, 2005, are hereby adopted by reference:

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DEPT. OF ADMINISTRATION

MAY 06 2011

APR 28 2011

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(1) Article I of the NASD bylaws;

(2) the NASD "conduct rules (2000-3000)"; and

(3) rule 472 of the New York stock exchange, "communications with the public."


(Authorized by K.S.A. ~~2005 Supp.~~ 17-12a605(a); implementing K.S.A. ~~2005 Supp.~~ 17-12a608; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended March 25, 1991; amended Oct. 7, 1991; amended April 17, 1995; amended May 31, 1996; amended Dec. 19, 1997; amended Aug. 18, 2006; amended P-_____.)

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DEPT. OF ADMINISTRATION

MAY 06 2011

APR 28 2011

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81-5-21. Invest Kansas exemption. (a) Exemption from registration requirements.

The offer or sale of a security by an issuer shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, and each individual who represents an issuer in an offer or sale shall be exempt from the requirements of K.S.A. 17-12a402(a), and amendments thereto, if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security shall be a business or organization formed under the laws of the state of Kansas and registered with the secretary of state.

(2) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the securities act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147, as adopted by reference in K.A.R. 81-2-1.

(3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(4) The issuer shall not accept more than \$1,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501, as adopted by reference in K.A.R. 81-2-1.

(5) A commission or other remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the act.

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MAY 06 2011

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DEPT. OF ADMINISTRATION

MAY 03 2011

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(6) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Kansas, and all the funds shall be used in accordance with representations made to investors.

(7) Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall provide a notice to the administrator in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

(A) The issuer;

(B) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and

(C) the bank or other depository institution in which investor funds will be deposited.

(8) The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the investment company act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 U.S.C. § 78m and 78o(d), as adopted by reference in K.A.R. 81-2-1.

(9) The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under K.S.A. 17-12a202 and amendments thereto, K.A.R. 81-5-3, or another regulation. In addition, the issuer shall make the disclosures required by subsection (f) of SEC rule 147, 17 C.F.R. 230.147(f), as adopted by reference in K.A.R. 81-2-1.

(b) Offers and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these regulations or K.S.A. 17-12a202 and

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

MAY 06 2011

MAY 03 2011

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amendments thereto, except for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in paragraph (a)(3).

(c) Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in K.A.R. 81-5-13(b), except as permitted under K.A.R. 81-5-13(c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a203 and 17-12a402(b)(9); effective P-_____.)

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DEPT. OF ADMINISTRATION

MAY 06 2011

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ECONOMIC IMPACT STATEMENT

Adoption of K.A.R. 81-5-21 and amendment of K.A.R. 81-2-1.

Description of the proposed amendments:

Before a security may be offered or sold in Kansas, it must be registered with the Office of the Securities Commissioner or qualify for an exemption from registration. Proposed K.A.R. 81-5-21 creates a new exemption that allows a Kansas company to raise up to \$1 million without going through the registration process. The maximum allowable investment by any single person is \$1,000 unless the person is an accredited investor. To qualify for the exemption, the company issuing the securities must notify the Office of the Securities Commissioner of its intention to rely upon the exemption before the twenty-fifth sale of the security or the use of any public solicitation for investors, whichever occurs first, and the issuer must make certain disclosures to investors. A commission or other remuneration cannot be given to any person for participating in the offer or sale of securities unless the person is registered as a broker-dealer or agent with the Office of the Securities Commissioner. The company issuing the securities must also comply with the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933.

This exemption differs from other available exemptions because it permits a public solicitation for investors. The proposed exemption is also designed to prevent an issuer of securities from unintentionally becoming a reporting company or investment company that is subject to numerous regulatory requirements under federal law.

K.A.R. 81-2-1 currently provides for the adoption by reference of all federal statutes and regulations that are used in the state-level securities regulations. The proposed amendment would add the federal laws that are referenced in new K.A.R. 81-5-21.

Federal mandate:

The new exemption is designed to be used in conjunction with federal law, but it is not mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program.

Description of costs:

The proposed exemption will allow Kansas companies to raise capital without going through the registration process. We estimate that a company would spend approximately \$_____ to properly register a \$1 million securities offering. The costs would include a filing fee of \$____, legal fees, due diligence costs, and other expenses associated with a securities offering. Most of these costs could be avoided if the company takes advantage

of the new exemption, which has no filing fee and is designed to be used with minimal legal assistance.

Because of the high expenses associated with registration, few companies use the registration process for small offerings. Therefore, the anticipated loss of revenue to the State of Kansas from registration fees is expected to be less than \$___ per year.

Under the new exemption, the merits of the offerings would not be reviewed by the Office of the Securities Commissioner. Therefore, the offerings may tend to involve a higher degree of risk to investors than a registered offering. However, the maximum loss would be capped at \$1,000 per investor, except for accredited investors.

We anticipate that the exemption will be used to start or preserve small companies that are important to the communities in which they operate and that the exemption will have a positive impact upon employment and other aspects of the local economy. These indirect economic impacts are difficult to predict and impossible to quantify.

The amendments will have no known economic impact upon any other governmental agency or entity.

Less costly or less intrusive alternatives:

There are no known alternatives to achieve the purposes of the regulation with less cost or intrusion.

Impact on cities, counties, or school districts:

The proposed amendments have no direct impact on the revenues, functions, or responsibilities of cities, counties or school districts.
